

SUBCOMMITTEE: CIVIL

HOUSE BILL NO. 759

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for _____)

on _____)

(Patron Prior to Substitute--Delegate VanValkenburg)

A BILL to amend and reenact § 8.01-670 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 8.01-223.3, and to repeal § 8.01-223.2 of the Code of Virginia, relating to strategic lawsuits against public participation; special motion to dismiss; stay of discovery; special motion to quash fees and costs.

Be it enacted by the General Assembly of Virginia:

1. That § 8.01-670 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 8.01-223.3 as follows:

§ 8.01-223.3. Strategic lawsuits against public participation; procedures.

A. For the purposes of this section, unless the context requires otherwise:

"Matter of public concern" means any oral statement made, or written statement, or other document submitted (i) in a legislative, executive, or judicial proceeding or other proceeding authorized by law; (ii) in connection with an issue or other proceeding authorized by law under consideration or review by a legislative, executive, or judicial body; (iii) in connection with a public official, public figure, or other person who has drawn public attention due to the person's official acts, fame, notoriety, or celebrity; (iv) in connection with an issue of political, social, or other significance to a local community or neighborhood; (v) in connection with an issue related to public health, public safety, protection of survivors of violence, abuse, or exploitation, environmental protection, civil rights, civil liberties, or a government entity or election. "Matter of public concern" also includes a published review of a good or service in the marketplace. "Matter of public concern" shall not be construed to include private interests, such as statements directed primarily toward protecting the defendant's commercial interests, rather than commenting on or sharing information about a matter of public concern.

27 "Strategic lawsuit against public participation" or "SLAPP" means a civil claim against a defendant
28 based on, or in response to, the defendant's lawful exercise of the constitutional right to petition or free
29 speech on a matter of public concern.

30 B. A party alleging that a claim filed against him is a SLAPP may file a special motion to dismiss.
31 Such special motion to dismiss shall be treated as a demurrer pursuant to § 8.01-273.

32 If a party alleging a special motion to dismiss makes a prima facie showing that the claim at issue
33 is a SLAPP, then the motion shall be granted and the claim dismissed with prejudice, unless the responding
34 party demonstrates that the claim is legally sufficient and supported by a prima facie showing of facts to
35 sustain a favorable judgment if the plaintiff's evidence is credited, in which case the special motion to
36 dismiss shall be denied.

37 Upon the filing of such a special motion, discovery proceedings related to the claim alleged to be
38 a SLAPP shall be stayed pending the entry of an order adjudicating such a special motion to dismiss,
39 unless the court allows limited and specific discovery for good cause shown. Limited and specific
40 discovery may be conditioned by the court upon the plaintiff paying any expenses incurred by the
41 defendant in responding to such discovery.

42 The court shall hold an expedited hearing on such special motion to dismiss and issue an order as
43 soon as practicable after such hearing. In making its decision on such special motion, the court shall
44 consider the pleadings and supporting and opposing affidavits stating the facts upon which the liability or
45 defense is based. If such special motion to dismiss is granted, dismissal of the SLAPP shall be with
46 prejudice.

47 A party aggrieved by an order granting or denying such special motion shall be permitted to submit
48 a petition for an appeal to the Supreme Court of Virginia pursuant to § 8.01-670.

49 C. A person whose personal identifying information is sought pursuant to a discovery order,
50 request, or subpoena in connection with an alleged SLAPP may make a special motion to quash such
51 order, request, or subpoena.

52 If the party filing a motion to quash makes a prima facie showing that the subpoena or order is for
53 personally identifying information, the motion shall be granted and the subpoena or order to produce the

personally identifying information shall be quashed, unless the responding party produces evidence supporting each element of the claim for which the party can reasonably be expected to have evidence without discovery, in which case the motion to quash shall be denied.

A party aggrieved by an order granting or denying such special motion to quash shall be permitted to submit a petition for an appeal to the Supreme Court of Virginia pursuant to § 8.01-670.

D. If the moving party prevails, in whole or in part, on a special motion to dismiss or quash, the court shall award such moving party reasonable expenses related to such motion, including attorney fees and costs.

If the responding party to such a special motion to dismiss or quash prevails, and the court finds that such special motion to dismiss or quash was filed in bad faith or solely with the intent to delay the proceedings on the underlying claim, the court may award such responding party reasonable expenses related to such motion, including attorney fees and costs.

E. The provisions of this section shall not apply to:

1. Any claim that arises out of the sale or lease of goods or services, including insurance products, between a seller and an actual or potential buyer or customer. This subdivision does not apply to:

a. Any publisher, editor, reporter, or other person connected with or employed by a newspaper, magazine, or other periodical publication, or by a press association or wire service, or any person who has been so connected or employed;

b. A radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed;

c. Any person engaged in the dissemination of ideas or expression in any book or academic journal while engaged in the gathering, receiving, or processing of information for communication to the public; or

d. Any action against any person or entity based upon the creation, dissemination, exhibition, advertisement, or other similar promotion of any dramatic, literary, musical, political, or artistic work, including a motion picture or television program and an article published in a newspaper or magazine of general circulation.

2. Any claim that is brought solely to enforce an important constitutional or statutory right held by the general public, or in an action seeking declaratory or injunctive relief against a governmental entity or agency.

3. Any action filed under Title 20, or an application for a protective order under Title 16.1 or Title 19.2.

4. Any claim that alleges discrimination or assault under a state or federal civil rights statute.

5. Any claim that seeks recovery for bodily injury, wrongful death, or survival.

6. Any claim that is brought by a whistleblower under a state or federal whistleblower statute.

7. An enforcement action initiated by the Attorney General or an attorney for the Commonwealth.

§ 8.01-670. In what cases awarded.

A. Except as provided by § 17.1-405, any person may present a petition for an appeal to the Supreme Court if he believes himself aggrieved:

1. By any judgment in a controversy concerning:

a. The title to or boundaries of land,

b. The condemnation of property,

c. The probate of a will,

d. The appointment or qualification of a personal representative, guardian, conservator, committee, or curator,

e. A mill, roadway, ferry, wharf, or landing,

f. The right of the Commonwealth, or a county, or municipal corporation to levy tolls or taxes, or

g. The construction of any statute, ordinance, or county proceeding imposing taxes; or

2. By the order of a court refusing a writ of quo warranto or by the final judgment on any such writ; ~~or~~

3. By a final judgment in any other civil case; or

4. By an order granting or denying a special motion to dismiss or special motion to quash provided by § 8.01-223.3.

107 B. Except as provided by § 17.1-405, any party may present a petition for an appeal to the Supreme
108 Court in any case on an equitable claim wherein there is an interlocutory decree or order:

- 109 1. Granting, dissolving or denying an injunction; or
110 2. Requiring money to be paid or the possession or title of property to be changed; or
111 3. Adjudicating the principles of a cause.

112 C. Except in cases where appeal from a final judgment lies in the Court of Appeals, as provided in
113 § 17.1-405, any party may present a petition pursuant to § 8.01-670.1 for appeal to the Supreme Court.

114 **2. That § 8.01-223.2 of the Code of Virginia is repealed.**

115 **3. That the procedures established by the first enactment of this act shall only be available for claims**
116 **filed on or after July 1, 2020.**

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